IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 262 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ADARSH KELVANI MANDAL & 1 - Appellant(s)
Versus
SULBHABEN VASANTRAV - Defendant(s)

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Appearance :
MR SHAILESH C PARIKH for Appellant(s) : 1 - 2.MR HB SHAH for Appellant(s) : 1 - 2.
MR SN SHELAT for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 14/08/2006

ORAL JUDGMENT

1. By way of this appeal, the appellants – original defendants (hereinafter referred to as “the defendants”) have challenged the judgment and decree passed by the learned City Civil Court,

Ahmedabad, dated 30th January, 1986 passed in Civil Suit No.3098 of 1984 in decreeing the said suit declaring the order passed by the defendants dated 2nd July, 1984 as null and void and the defendants were further directed to pay to the plaintiff all the arrears of salary from the date from which she was discontinued from service i.e. from 2nd July, 1984 as if she is in continuous service and the defendants were also directed to permit her to resume duties.

2. The plaintiff, who was serving as a teacher in primary school with the defendants filed Civil Suit No.3098 of 1984 in the City Civil Court, Ahmedabad, for declaring the order of dismissal dated 2nd July, 1984 as null and void as the same was against the principals of natural justice and without following any due procedure and holding any inquiry.

3. It was averred in the plaint that she was employed and appointed as a primary teacher in

the month of June-1976 in the primary school run by the trust called Adarsh Kelvani Mandal and the appointment letter was issued to her on 10th June, 1976. According to her, she was having requisite qualifications and she was appointed in the Pay-scale of Rs.135–5-250 plus the dearness allowance. It was further averred that due to internal disputes amongst the trustees of the trust, the President and Secretary of the trust were keeping grudge against the plaintiff and other teachers and were trying to remove her by any means without following any procedure and though she was carrying on her teaching work regularly and was fulfilling her obligations, she was removed from the service. It was further averred in the plaint that the Secretary of the trust gave a warning to the plaintiff by its letter dated 8th December, 1983 and the same was received by the plaintiff on 4th April, 1984 and thereafter, she received a show-cause notice dated 30th May, 1984 and therefore, she gave her explanation on 1st July, 1984 but the defendants

arbitrarily and without conducting any inquiry as required to be followed under the provisions of the Bombay Primary Education Act took arbitrary decision and dismissed her from service by letter dated 2nd July, 1984. It was further averred in the plaint that as she was a permanent employee, her service could not have been terminated without following any procedure as required under the Bombay Primary Education Act, more particularly, Schedule – F and therefore, the action of the defendants in dismissing her from service was in breach of principles of natural justice and against the provisions of the Bombay Primary Education Act.

4. The suit was resisted by the defendants and preliminary objection was raised with regard to the maintainability of the suit by contending inter alia that the plaintiff had a remedy under the Industrial Disputes Act and therefore, the suit is not maintainable. The learned trial Court passed a speaking order rejecting the

preliminary objection and held that in view of the amendment in the Industrial Disputes Act, and as per the judgment of the Hon'ble Supreme Court, the Industrial Dispute Act is not applicable to the education institutions and therefore, the Civil Court would have jurisdiction. It is required to be noted that the said order was not challenged further and it has become final. It was the contention on behalf of the defendants that a warning was given to the plaintiff and after considering the reply submitted by the plaintiff, she was dismissed from service and therefore, it cannot be said that before dismissing her from service, no procedure has been followed and therefore, it was requested to dismiss the suit. The learned trial Court held that as the plaintiff being a permanent employee in the education institution, more particularly, in primary school her service could not have been terminated without following due procedure as required under the provisions of the Bombay Primary Education Act and

accordingly, held that the order of dismissal passed by the defendants was null and void and accordingly quashed and set aside the same and directed the defendants to treat the plaintiff on duty and to pay all consequential benefits available to her. Being aggrieved and dissatisfied with the judgment and decree passed by the learned trial Court passed in Civil Suit No.3098 of 1984 in decreeing the suit, the original defendants have preferred the present appeal.

5. The learned advocate appearing on behalf of the appellants is absent though this appeal is called out twice today. This being an old appeal of the year 1986, this Court decided to decide and dispose of the present appeal on merits ex-parte.

6. Ms. Rupa Rane, learned advocate appearing on behalf of the respondent herein – original plaintiff has submitted that considering the

fact that the plaintiff was a permanent employee in the primary school, her service could not have been terminated without following due procedure as required under the provisions of the Bombay Primary Education Act, more particularly, Schedule – F to the same. It is submitted by her that mere giving warning is not sufficient and the departmental inquiry as required under the provisions of the Act was required to be followed and as the same was not followed, the order of dismissal was against the principles of natural justice as well as against the provisions of the Bombay Primary Education Act and the Schedule – F and therefore, the learned trial Court has rightly decreed the suit and therefore, it is requested to dismiss the present appeal.

7. At the outset it is required to be noted that the judgment and decree came to be passed by the learned trial Court on 30th January, 1986 and the present appeal came to be filed in February –

1986. The Civil Application No.628 of 1986 was filed for interim relief and it appears from the record that initially it was contended on behalf of the appellants that as the provisions of Schedule – F was challenged before the Hon'ble Supreme Court and therefore, the said Civil Application was adjourned. However, subsequently, as the virus of Schedule – F were upheld and they were held to be intra virus, the learned Single Judge of this Court dismissed the application for interim relief in the year 1988. Thus, during the pendency of the appeal, there is no interim relief in favour of the appellants. It emerges from the record that the plaintiff was serving as a teacher in the primary school and her service conditions are governed by the provisions of the Bombay Primary Education Act and Schedule – F, the main contention on behalf of the defendants was that the suit is not maintainable as the plaintiff is required to initiate the proceedings under the provisions of the Industrial Disputes Act. As

stated above, the preliminary objection was raised with regard to maintainability of the suit, however, the application was rejected by a speaking order, which was not carried further and the said order has become final. Even otherwise, so far as education institutions are concerned, the Industrial Disputes Act will not be applicable and under the circumstances, the learned trial Court has rightly held that the suit is maintainable. So far as the merits of the case are concerned, it is an admitted position that except the warning and reply to the said warning, no departmental inquiry was initiated under the provisions of the Schedule – F of the Bombay Primary Education Act, before dismissing an employee/teacher and a regular inquiry was required to be held. In the present case, nothing is on record that any departmental inquiry was initiated and held against the plaintiff and straight away the impugned order dated 2nd July, 1984 came to be passed dismissing the plaintiff from service. Under the

circumstances, the learned trial Court has rightly decreed the suit by declaring the order of dismissal dated 2nd July, 1984 as null and void and has rightly passed an order to treat the plaintiff in service and to give her all consequential benefits accordingly. No error has been committed by the learned trial Court. The learned trial Court was justified in decreeing the suit and declaring the order of dismissal dated 2nd July, 1984 as null and void. Once the order of dismissal is declared as null and void, all the consequences must follow and therefore, the learned trial Court has not committed any error in passing further consequential order. This Court is in complete agreement with the reasoning and findings of the learned trial Court in decreeing the suit.

8. For the reasons stated above, the appeal fails and is required to be dismissed and is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no

order as to costs.

[M.R.SHAH, J.]

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